

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 2002-11

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-104-02

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED

Secretary of State
Filing Data

**For Filing
Administrative
Regulations**

For Emergency
Regulations Only

Effective Date

Expiration Date

Governor's Signature

State Environmental Commission

Classification ☐ Proposed ☐ Adopted By Agency ☒ Temporary ☐ Emergency ☐

Brief description of action: **Petition 2002-11 (LCB R104-02)** is a permanent amendment to NAC 444.842 to 444.9555, regulations relating to hazardous waste management and facilities. The amendment updates the reference to the federal code of regulations (CFR) from July 1, 2001 to July 1, 2002 in NAC 444.8427, 444.8475, 444.850 444.8632, and 444.9452. NAC 444.8455 and 444.8455 is amended to require emergency preparedness and contingency plans for containers and tanks. NAC 444.86325 is amended to remove the prohibition on the implementation of 40 CFR Section 261.2(c)(3). These amendments require hazardous waste recyclers to comply with standards similar to hazardous waste treatment and storage facilities.

Authority citation other than 233B: NRS 459.485, 459.490 and 459.500

Notice date: August 7, August 12, August 14, August 20, August 21, August 27, 2002

Hearing date: September 11, 2002

Date of Adoption of Agency: September 11, 2002

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 2002-11 LCB File R-104-02
STATE ENVIRONMENTAL COMMISSION**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 444. This regulation deals with amendments to the hazardous waste management and recycling program.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 2002-11 (LCB File R-104-02), was noticed on August 7, August 12, August 14, August 20, August 21, August 27, 2002 as a permanent regulation in the Las Vegas Review Journal and the Reno-Gazette-Journal newspapers. Regulatory workshops were conducted by the Nevada Division of Environmental Protection's Bureau of Waste Management on August 13, 2002, in Carson City and August 14, 2002 in Las Vegas. The regulation was adopted by the State Environmental Commission as a permanent regulation on September 11, 2002. There was no public comment or written testimony received by the Commission during permanent adoption. The public was also mailed the notice of intent and agenda through the Environmental Commission's mailing list. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-9308, or writing to the Commission at 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851.

2. The number persons who:

(a)	Attended each hearing;	45
(b)	Testified at each hearing:	0
(c)	Submitted to the agency written comments:	0

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1 and by direct mail to interested persons subscribing to the Commission's mailing list. See above statement for dates of the public notices and public workshops. There was no business comment or written testimony received by the Commission during permanent adoption. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission (775) 687-9308 or writing to the Commission at 333 W. Nye Lane, Room 138, Carson City, Nevada 89706-0851.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted by the State Environmental Commission on September 11, 2002 with an amendment.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Estimated economic effect of the regulation on the business which it is to regulate;

Adoption of the federal regulations by reference is not anticipated to have significant short or long-term economic impact. These regulations should make it easier for affected businesses to comply by simplifying requirements. Hazardous waste recyclers' owners will be required to provide financial assurance for facility closure. This will distribute the long-term cost of closure to an immediate or near-term cost, which may be viewed as a significant economic burden for some hazardous waste recyclers. The requirement to develop and follow an operating plan is not expected to have a significant impact unless extensive upgrades are needed to meet minimum standards. Three businesses will be affected by the new requirements.

(b) Estimated economic effect on the public;

The proposed amendments are not expected to have any economic short or long-term adverse impact upon the public

6. The estimated cost to the agency for enforcement of the adopted regulation.

The implementation of the adopted regulation is not expected to result in any additional cost by the Division of Environmental Protection.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulations do not overlap or duplicate any regulations of another state or local governmental agency.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The state initiated changes to the regulations governing hazardous waste recyclers are an extension of existing state regulations, which are more stringent than current federal recycling regulations.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulations do not provide a new fee nor increase an existing fee.

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FILED PERMANENT REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

LCB File No. R104-02 SEC 2002-11

Effective October 18, 2002

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-9, NRS 459.485, 459.490 and 459.500.

Section 1. NAC 444.8427 is hereby amended to read as follows:

444.8427 “Facility for community recycling” means a facility for recycling hazardous waste which has a yearly capacity that is not more than twice the amount of the type of hazardous waste proposed to be recycled that is generated within the region in this state in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July 1, ~~2001~~ **2002**.

Sec. 2. NAC 444.84275 is hereby amended to read as follows:

444.84275 “Facility for community storage” means a facility for the storage and consolidation of hazardous waste which has a yearly capacity that is not more than twice the amount of hazardous waste that is generated within the county in which the facility is or is proposed to be located, as determined by the generation rate contained in the biennial report required by the provisions of 40 C.F.R. § 262.41, as that section existed on July 1, ~~2001~~ **2002**.

Sec. 3. NAC 444.8455 is hereby amended to read as follows:

444.8455 1. Except as otherwise provided in subsection 4, a person who proposes to construct or operate a facility for the recycling of hazardous waste must obtain a written determination from the administrator that the facility will operate as a facility for the recycling of hazardous waste before he commences the construction or operation of the facility. ***If the facility will recycle hazardous waste other than used antifreeze governed by NAC 444.8801 to 444.9071, inclusive, or precious metals governed by 40 C.F.R. Part 266, the administrator must approve an operating plan for the facility before construction or operation of the facility commences. Such an operating plan must, without limitation, include a description of the procedures that will ensure safe operation and demonstrate compliance with:***

(a) The requirements for emergency preparedness and a contingency plan specified in 40 C.F.R. Part 264, Subparts C and D;

(b) The standards for containers and tanks specified in 40 C.F.R. Part 264, Subparts I, J, AA, BB and CC; and

(c) The applicable requirements for closure and financial assurance for closure specified in 40 C.F.R. Part 264, Subparts G and H.

2. Except as otherwise provided in subsection 4, a person who proposes to construct or operate a mobile unit for the recycling of hazardous waste must obtain a written determination from the administrator that the mobile unit will operate as a mobile unit for the recycling of hazardous waste before he commences the construction or operation of the mobile unit.

3. A written determination required pursuant to subsection 1 or 2 may be requested by filing a written application with the administrator.

4. The provisions of this section do not apply to a person who is recycling hazardous waste which he has generated, at a unit for the recycling of hazardous waste which is owned by him and is located at the same site at which the hazardous waste is generated.

Sec. 4. NAC 444.84555 is hereby amended to read as follows:

444.84555 1. An application for a written determination that a proposed facility or mobile unit will operate as a facility for the recycling of hazardous waste or mobile unit for the recycling of hazardous waste must be accompanied by:

(a) The name and address of the owner and operator of the facility or mobile unit;

(b) The name and address of the property owner of the location at which a facility is proposed to be constructed;

(c) A detailed description of the type of recycling which is proposed, including:

(1) The manufacturer of the equipment to be used at the facility or mobile unit;

(2) The nature of the recycling; and

(3) An explanation evidencing that the:

(I) Facility is a facility for the recycling of hazardous waste; or

(II) Mobile unit is a mobile unit for the recycling of hazardous waste;

(d) A description of the source and estimated amount of hazardous waste to be recycled on an average day and on a peak day;

(e) A physical and chemical description of the type of hazardous waste to be accepted by the facility or processed by the mobile unit;

(f) A detailed economic analysis of the recycling process to be used at the facility or by the mobile unit, including:

(1) The projected costs to operate the facility or mobile unit;

(2) The fees that would be charged per unit of volume to process waste transported to the facility or processed by the mobile unit;

(3) The projected value that would be recovered per unit of volume; and

(4) The projected costs otherwise to manage, recycle, treat or dispose of the material as a hazardous waste;

(g) A description of the markets and the uses for the products to be produced and the materials and energy to be recovered; ~~and~~

(h) A comparison of the economic and environmental impact of the proposed recycling process to a process which uses material that is not considered waste when producing the same product~~[-]~~ ; **and**

(i) An operating plan if the facility is a stationary facility and will recycle hazardous waste other than used antifreeze governed by NAC 444.8801 to 444.9071, inclusive, or precious metals governed by 40 C.F.R. Part 266. Such an operating plan must, without limitation, include a description of the procedures that will ensure safe operation and demonstrate compliance with:

(1) The requirements for emergency preparedness and a contingency plan specified in 40 C.F.R. Part 264, Subparts C and D;

(2) The standards for containers and tanks specified in 40 C.F.R. Part 264, Subparts I, J, AA, BB and CC; and

(3) The applicable requirements for closure and financial assurance for closure specified in 40 C.F.R. Part 264, Subparts G and H.

2. The administrator may require the applicant to submit additional information before issuing a written determination.

3. The administrator shall not issue a written determination unless he determines, based upon the application, that all ~~to~~ the following requirements are satisfied:

(a) The facility or mobile unit will be operated as a facility or mobile unit for the recycling of hazardous waste.

(b) The recycling process has economic value. A recycling process has economic value if:

(1) The applicant shows that the material recovered from or the products or energy produced as a result of the process have value in the marketplace; and

(2) The fees that the applicant charges per unit of volume to process the material are less than or equal to the cost otherwise to recycle, manage, treat or dispose of the material as a hazardous waste, except that the fees that the applicant charges per unit of volume may be offset by the recovered unit value of the material recovered from or the products or energy produced as a result of the process.

(c) The probable beneficial environmental effect of the facility or mobile unit to the state outweighs the probable adverse environmental effect.

4. Before issuing a written determination for a facility, the administrator shall provide for a period of public notice and comment of not less than 45 days. The request for public comment must be noticed in a local newspaper of general circulation that is published daily or weekly and must be sent to all persons on a mailing list developed and maintained by the administrator. A person may request to be placed on the mailing list by contacting the administrator. The administrator shall respond to all comments he receives during the period provided for comments before making his determination to issue or not to issue a written determination.

5. The administrator may revoke, suspend or modify a written determination if, at any time, he determines that:

(a) A facility or mobile unit no longer satisfies the conditions stated in the application upon which the administrator issued the written determination;

(b) An applicant misrepresented or failed to disclose fully a relevant fact on his application;

(c) The administrator receives information that was not available at the time he issued the written determination which would have justified the imposition of different conditions at the time the determination was issued; or

(d) The standards or regulations on which the administrator based the written determination have been changed.

6. A person may request a hearing before the state environmental commission concerning a final decision of the administrator to issue, deny, revoke, suspend or modify a written determination by filing a request, not more than 10 days after receiving notice from the administrator of his decision, on form 3 with the State Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. The provisions of NAC 445B.875 to 445B.899, inclusive, apply to a hearing of the state environmental commission requested pursuant to this section.

Sec. 5. NAC 444.8456 is hereby amended to read as follows:

444.8456 1. A stationary new or expanding facility for the management of hazardous waste must not be constructed within:

(a) One mile of:

- (1) A dwelling, school, church or community center;
 - (2) An area zoned solely for residential use;
 - (3) A public park;
 - (4) A wildlife management area;
 - (5) An area identified by the division of wildlife of the state department of conservation and natural resources as a key habitat for wildlife or as a habitat for an endangered or threatened species;
 - (6) An area where surface water or wetlands occur;
 - (7) A natural or man-made geologic hazard which provides a potential for the conveyance of hazardous constituents, as that term is defined in Appendix VIII of 40 C.F.R. Part 261, to surface or ground waters; or
 - (8) An existing well which supplies public drinking water;
- (b) An area identified by the office of historic preservation of the department of cultural affairs as an historical or archeological site ~~that is eligible for listing in the state register of historic places or the national register of historic places, unless an approved mitigation activity has been completed on the site;~~
- (c) A 100-year flood plain; or
- (d) An area where the water table seasonally rises to within 150 feet of the surface of the ground.

2. The provisions of this section do not apply to a facility:

- (a) For community recycling;
- (b) For community storage;
- (c) For the storage of hazardous waste which is generated on the site of the facility; or
- (d) Which qualifies for interim status pursuant to 40 C.F.R. Part 270, Subpart G.

Sec. 6. NAC 444.850 is hereby amended to read as follows:

444.850 As used in NAC 444.850 to 444.8746, inclusive, unless the context otherwise requires:

1. The words and terms defined in NAC 444.8505 to 444.861, inclusive, have the meanings ascribed to them in those sections.

2. Except for the words and terms otherwise defined in NAC 444.8505 to 444.861, inclusive, the words and terms defined in 40 C.F.R. § 260.10, as that section existed on July 1, ~~2001~~, **2002**, have the meanings ascribed to them in that section.

Sec. 7. NAC 444.8632 is hereby amended to read as follows:

444.8632 1. In addition to the requirements of NAC 444.850 to 444.8746, inclusive, a person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste or used oil shall comply with all applicable requirements of, and may rely upon applicable exclusions or exemptions under 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, Part 273 and Part 279, as those provisions existed on July 1, ~~2001~~, **2002**, which, except as otherwise modified by NAC 444.86325, 444.8633 and 444.8634, are hereby adopted by reference. The commission may use federal statutes and regulations that are cited in 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, Parts 260 to 270, inclusive, Part 273 and Part 279, to interpret these sections and parts.

2. The volumes containing these parts may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the following prices:

- (a) Volume 40 C.F.R. Part 2..... ~~37~~ **54**
- (b) Volume 40 C.F.R. Part 124..... ~~66~~ **38**
- (c) Volume 40 C.F.R. Parts 260 to 265, inclusive..... ~~36~~ **45**
- (d) Volume 40 C.F.R. Parts 266 to 299, inclusive..... ~~35~~ **45**

Sec. 8. NAC 444.86325 is hereby amended to read as follows:

444.86325 1. The following sections and parts of Title 40 of the Code of Federal Regulations, and any reference to these sections and parts, are not adopted by reference:

- (a) Sections 2.106(b) and 2.110;
- (b) Sections 124.1(b)-(e), 124.4, 124.5(e), 124.9, 124.10(a)(1)(iv), 124.15(b)(2), 124.16, 124.17(b), 124.18, 124.19 and 124.21;
- (c) Sections 260.1(b)(4)-(6) and 260.20, 260.21 and 260.22;
- (d) Section 261.5(j);
- (e) Part 262, Subpart H;
- (f) Sections 264.1(d), 264.1(f), 264.149, 264.150, 264.301(1), 265.1(c)(4), 265.149, 265.150 and 265.430;
- (g) Section 266.111;

(h) Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b) and 268.44;
(i) Sections 270.1(c)(1)(i), 270.60(b) and 270.64; and
(j) Sections 279.10(b)(2), 279.10(b)(3), 279.10(c), 279.10(d)(1), 279.42(b)(2), 279.51(b)(2), 279.62(b)(2) and 279.73(b)(2).

2. The following parts and sections of Title 40 of the Code of Federal Regulations are adopted by reference, as revised in this subsection:

(a) Part 124 is adopted with the following exceptions:

- (1) Delete all references to appeals to the Administrator in section 124.5(b);
- (2) Delete all references to “EPA-issued permits” and insert in its place “permits issued by the department,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);
- (3) Delete all references to “when EPA is the permitting issuing authority” and insert in its place “when the department is authorized to issue a permit,” except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);
- (4) Subpart A is adopted solely for the purpose of establishing procedures for permits for the management of hazardous waste, except that all references to “UIC,” “PSD” and “NPDES” are deleted;
- (5) Delete all references to “RCRA part B,” “part B RCRA” and “part B” and insert in their place “NRS 459.400 to 459.600, inclusive,” in sections 124.31 and 124.32; and
- (6) Delete from sections 124.31(a), 124.32(a) and 124.33(a) the following sentence: “For the purposes of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 C.F.R. part 271.”

(b) Section 260.2(a) is adopted except that “the Freedom of Information Act, 5 U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b)” must be replaced with “NRS 459.555 and any regulations adopted pursuant thereto.”

(c) Section 260.33(b) is adopted except that “in the locality where the recycler is located” is deleted.

(d) Section 260.41(a) is adopted except that “or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal” is deleted.

(e) ~~Section 261.2(e)(3) is adopted except that “(except as provided under 40 C.F.R. 261.4(a)(17))” is deleted from the second sentence.~~

~~—(f)~~ Section 261.4(e)(3)(iii) is adopted except that “in the Region where the sample is collected” is deleted.

~~{(g)}~~ **(f)** Section 262.11(c)(1) is adopted except that “, or according to an equivalent method approved by the Administrator under 40 C.F.R. Part 260.21” is deleted.

~~{(h)}~~ **(g)** Sections 262.42(a)(2) and 262.42(b) are adopted except that “for the Region in which the generator is located” is deleted.

~~{(i)}~~ **(h)** Sections 264.18(c) and 265.18 are adopted except that “except for the Department of Energy Waste Isolation Pilot Project in New Mexico” is deleted.

~~{(j)}~~ **(i)** Sections 264.143(h), 264.145(h), 265.143(g) and 265.145(g) are adopted except that “If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions” is deleted.

~~{(k)}~~ **(j)** Sections 264.147(a)(1)(i), 264.147(b)(1)(i) and 265.147(a)(1)(i) are adopted except that “or Regional Administrators if the facilities are located in more than one Region” is deleted.

~~{(l)}~~ **(k)** Section 264.151 is adopted with the following exceptions:

(1) Delete all references to “(of/for) the Regions in which the facilities are located”; and

(2) Delete “an agency of the United States Government” from the second paragraph of the trust agreement.

~~{(m)}~~ **(l)** Part 270 is adopted except that all references to “interim authorization” are deleted.

~~{(n)}~~ **(m)** Section 279.40(c) is adopted except that “unless, under the provisions of § 279.10(b), the hazardous waste/used oil mixture is determined not to be hazardous waste” is deleted.

Sec. 9. NAC 444.9452 is hereby amended to read as follows:

444.9452 1. All sections, subparts and parts of Title 40 of the Code of Federal Regulations referred to in NAC 444.940 to 444.9555, inclusive, as modified by NAC 444.9453, are hereby adopted by reference as they existed on July 1, ~~{2001}~~ **2002**.

2. The volumes containing these sections, subparts and parts may be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, for the following prices:

(a) The volume containing 40 C.F.R. Parts 260 to 265, inclusive..... ~~{\$36}~~ **\$45**

(b) The volume containing 40 C.F.R. Parts 266 to 299, inclusive..... ~~{35}~~ **45**

(c) The volume containing 40 C.F.R. Part 761..... ~~{46}~~ **55**

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